

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff,

vs.

SONOS, INC.,

Defendant.

Case No. 3:20-cv-06754 WHA
Related to Case No. 4:21-07559

**[PROPOSED] ORDER APPOINTING
COMMISSIONERS TO TAKE
EVIDENCE PURSUANT TO CHAPTER
II, ARTICLE 17 OF THE HAGUE
CONVENTION OF 18 MARCH 1970 ON
THE TAKING OF EVIDENCE ABROAD
IN CIVIL OR COMMERCIAL MATTERS**

Referral: Hon. Donna M. Ryu, USMJ

Case No. 3:20-cv-06754 WHA

**[PROPOSED] ORDER APPOINTING COMMISSIONERS TO TAKE EVIDENCE
PURSUANT TO CHAPTER II, ARTICLE 17 OF THE HAGUE CONVENTION**

~~[PROPOSED]~~ ORDER

WHEREAS, the Court having previously granted the parties' Joint Motion for Appointment of Commissioners to Take Evidence Pursuant to Chapter II, Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (ECF No. 217) for the remote deposition of Janos Levai;

WHEREAS, the Swiss Federal Office of Justice ("FOJ") having previously granted permission for the taking of the remote deposition of Mr. Levai pursuant to this Court's Letter of Request;

WHEREAS, the Court having recently granted Google LLC's ("Google") Motion Amend for Leave to Amend Invalidity Contentions Pursuant to Patent L.R. 3-6 ("Motion") and permitted certain amendments to the scope of Google's Invalidity Contentions;

WHEREAS, the Court having also recently permitted Sonos, Inc. ("Sonos") to take additional deposition testimony of Mr. Levai in connection with granting Google's Motion;

WHEREAS, the parties having requested assistance from this Court to seek a renewal of the FOJ's permission for the purposes of taking an additional remote deposition of Mr. Levai in Switzerland;

WHEREAS, the parties having agreed and requested that Olivier Buff, a Swiss attorney representing the Google LLC, will again be appointed Swiss Commissioner,

WHEREAS, the parties having also agreed and requested that Nima Hefazi will again be appointed commissioner for Google, along with James Judah, and that Dan Smith, Michael Boyea, and Sean Sullivan will again be appointed commissioners for Sonos;

WHEREAS, the parties have also agreed and requested that the deposition will again take place via remote videoconferencing software from the Swiss offices of Quinn Emanuel at Dufourstrasse 29, 8008 Zürich, Switzerland (or another nearby office if additional space is required);

1 WHEREAS, the Court, having reviewed the Joint Motion for Appointment of
2 Commissioners to Take Evidence Pursuant to Chapter II, Article 17 of the Hague Convention of
3 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (ECF No. 435)
4 and supporting papers submitted by Google and Sonos for the renewal of the FOJ's permission.
5

6 **HEREBY ORDERS THAT:**

7 (a) The Joint Motion (ECF No. 435) is GRANTED;
8
9 (b) Pursuant to Article 17 of the Hague Convention, Olivier Buff (the "Swiss
10 Commissioner"), Nima Hefazi, James Judah, Dan Smith, Michael Boyea, and Sean Sullivan
11 (together, the "Commissioners") are duly appointed, pending the approval of the Swiss FOJ, as
12 commissioners to take evidence in the above-captioned action, specifically in connection with the
13 deposition of Janos Levai;
14
15 (c) This signed Order will be given to the counsel for the parties and the Swiss
16 Commissioner who is directed to file it together with the renewed request for authorization from the
17 relevant Swiss authorities within five (5) business days of the date of this order;
18
19 (d) Neither this Order, nor the terms of the Court's Request (which is incorporated into
20 this Order) shall restrict the scope of discovery otherwise permissible under the Federal Rules of
21 Civil Procedure.
22
23 (e) Neither this Order, nor the terms of the Court's Request (which is incorporated into
24 this Order) shall constitute or operate as a waiver of the attorney-client privilege, the work product
25 doctrine, or any other privileges, rights, or protections that may apply to evidence under the laws of
26 Switzerland or the United States.

27 **SO ORDERED.**

28 DATED: December 27, 2022



HON. DONNA M. RYU
United States Magistrate Judge

1 QUINN EMANUEL URQUHART &
2 SULLIVAN, LLP
3 Charles K. Verhoeven (Bar No. 170151)
charlesverhoeven@quinnemanuel.com
4 Melissa Baily (Bar No. 237649)
melissabaily@quinnemanuel.com
Lindsay Cooper (Bar No. 287125)
lindsaycooper@quinnemanuel.com
5 50 California Street, 22nd Floor
San Francisco, California 94111-4788
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

6
7 *Attorneys for Google LLC*
8

9 CLEMENT SETH ROBERTS (SBN 209203)
croberts@orrick.com
10 ALYSSA CARIDIS (SBN 260103)
acaridis@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
11 The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: +1 415 773 5700
Facsimile: +1 415 773 5759

12
13 *Attorneys for Sonos, Inc.*
14

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 GOOGLE LLC,

19 Plaintiff,

20 vs.

21 SONOS, INC.,

22 Defendant.

23 Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

24 **APPOINTMENT OF COMMISSIONERS
UNDER THE HAGUE CONVENTION AND
REQUEST FOR JUDICIAL ASSISTANCE**

25 Referral: Hon. Donna M. Ryu, USMJ

26
27
28 Case No. 3:20-cv-06754 WHA

29
30 APPOINTMENT OF COMMISSIONERS UNDER THE HAGUE CONVENTION
AND REQUEST FOR JUDICIAL ASSISTANCE

1 **APPOINTMENT OF COMMISSIONERS UNDER THE HAGUE CONVENTION**
 2 **AND REQUEST FOR JUDICIAL ASSISTANCE – RENEWAL OF PERMISSION TO**
 3 **TAKE EVIDENCE BY A COMMISSIONER UNDER ARTICLE 17 HAGUE EVIDENCE**
 4 **CONVENTION 1970 TO THE FEDERAL OFFICE OF JUSTICE (FOJ), CENTRAL**
 5 **AUTHORITY FOR THE REQUEST FOR JUDICIAL ASSISTANCE IN CIVIL AND**
 6 **COMMERCIAL MATTERS:**

7 The United States District Court for the Northern District of California, located at the
 8 Oakland Courthouse, Courtroom 4 – 3rd Floor, 1301 Clay Street, Oakland, CA 94612, presents its
 9 compliments to the Federal Office of Justice and has the honor of requesting its assistance in
 10 obtaining evidence to be used in a civil proceeding now pending before this Court in the above-
 11 captioned matter, specifically by permitting commissioners appointed by this Court to take evidence
 12 under Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in
 13 Civil or Commercial Matters (“Hague Convention”).

14 Mr. Janos Levai, whose professional address is: Brandschenkestrasse 110, 8002 Zürich,
 15 Switzerland, was previously deposed by permission of the Federal Office of Justice in May 2022.
 16 However, because this Court recently permitted certain amendments to the scope of Google’s
 17 Invalidity Contentions, it appears to this Court that Mr. Levai has additional testimony relevant to
 18 this action. It is necessary for the purposes of justice and for the due determination of the matters
 19 in question between the parties that Mr. Levai be examined (remotely) again at the Swiss offices of
 20 Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland or another nearby office if additional
 21 space is required, under oath or affirmation. This Court, therefore, respectfully requests your
 22 assistance pursuant to the Hague Convention in obtaining additional oral deposition testimony of
 23 Mr. Janos Levai under the terms set forth in this Letter of Renewed Request:

24 **I. SUMMARY OF ACTION**

25 1. The above-captioned actions are properly under the jurisdiction of and are now
 26 pending before the United States District Court for the Northern District of California, Oakland
 27 Courthouse, Courtroom 4 – 3rd Floor, 1301 Clay Street, Oakland, CA 94612, United States of
 28 America. The United States District Court for the Northern District of California is fully sanctioned

1 as a court of law and equity and is authorized by Rule 28(b) of the Federal Rules of Civil Procedure
 2 to direct the taking of evidence abroad by Letters of Request.

3 2. The parties to the civil action pending in the United States District Court for the
 4 Northern District of California are as follows:

5 a. Google LLC (hereinafter, "Google") is a corporation organized and existing under
 6 the laws of the State of Delaware, with its headquarters in California, USA. Witness
 7 Janos Levai is an individual who is employed by Google as a Software Engineer but
 8 is a resident of Switzerland. Google is represented by QUINN EMANUEL
 9 URQUHART & SULLIVAN, LLP, 50 California Street, 22nd Floor, San Francisco,
 10 CA 94111, USA.

11 Correspondence to Google can be faxed to its representatives at +1 (415) 875-6700
 12 or emailed at the following email addresses: charlesverhoeven@quinnmanuel.com,
 13 melissabaily@quinnmanuel.com, jamesjudah@quinnmanuel.com,
 14 marckaplan@quinnmanuel.com, and qe-sonos3@quinnmanuel.com.

15 b. Sonos, Inc. (hereinafter "Sonos") is a corporation organized and existing under the
 16 laws of Delaware, with headquarters in California, USA. Plaintiffs are represented
 17 by ORRICK, HERRINGTON & SUTCLIFFE LLP, The Orrick Building, 405
 18 Howard Street, San Francisco, CA 94105; and LEE SULLIVAN SHEA & SMITH
 19 LLP, 656 W. Randolph Street, Floor 5W, Chicago, IL 60661, USA.

20 Correspondence to Sonos can be faxed to its representatives at +1 (415) 773-5759
 21 and +1 (312) 754-9603 or emailed at the following email addresses:
 22 smith@ls3ip.com, boyea@ls3ip.com, sullivan@ls3ip.com, and Sonos-NDCA-06754-service@orrick.com.

23 3. These above-captioned actions are two cases regarding speaker technology that have
 24 been related by the Court. Sonos has sued Google for infringement of U.S. Patent Nos. 9,967,615
 25 ("the '615 patent"); 10,779,033 ("the '033 patent"); 10,469,966 ("the '966 patent"); and 10,848,885
 26 ("the '885 patent").

1 ("the '885 patent") (collectively, the "Patents-in-Suit") under the patent laws of the United States,
 2 35 U.S.C. § 1 *et. seq.* Google filed a declaratory judgment action for non-infringement of the
 3 Patents-in-Suit under the Declaratory Judgment Act, 8 U.S.C. § 2201 and the patent laws of the
 4 United States, 35 U.S.C. §§ 1-390, as well as claims against Sonos for breach of contract and
 5 conversion. Both Sonos and Google believe all respective claims against them should be dismissed.
 6

7 4. The Court recently granted Sonos permission to depose Mr. Janos Levai again. The
 8 parties have agreed to conduct a remote deposition of Mr. Janos Levai, who will be located for such
 9 deposition in Switzerland, in accordance with Chapter II of the Hague Convention.

10 **II. EVIDENCE REQUESTED**

11 5. The parties have satisfied this Court that Mr. Janos Levai has material information
 12 related to this pending action for use at trial, and that justice cannot be completely done between the
 13 parties without his testimony.

14 6. The parties requested that this Court issue the present Letter of Renewed Request
 15 seeking your assistance in obtaining testimony from Mr. Janos Levai. The evidence to be obtained
 16 is oral testimony to be taken in Switzerland, and is intended to be used as evidence in the trial for
 17 this matter. Mr. Janos Levai, who is a resident of Switzerland, has been apprised of his rights under
 18 Swiss law and has consented to being deposed in Switzerland.

19 7. The Court requests assistance in permitting the commissioners appointed by this
 20 Court to take testimony from Mr. Janos Levai, which will be given voluntarily. The topics of
 21 examination will be limited to Mr. Janos Levai's knowledge reasonably related to the YouTube
 22 Remote's "party mode" feature.

23 8. This Court is satisfied that the testimonial evidence is relevant to the pending
 24 proceeding and is likely to be used at trial to assist this Court in resolving the dispute presented in
 25 the civil action before it. With the approval of this Court, the parties and this Court therefore seek
 26

1 permission to have commissioners take this testimonial evidence for the purpose of using such
 2 evidence at trial.

3 9. It is requested that the testimonial evidence be given in the English language, and on
 4 oath or affirmation. It is also hereby requested that the testimony be in the form of a recorded remote
 5 deposition testimony via a secure session using videoconferencing technology upon questions
 6 communicated to the witness by U.S. counsel of the parties, acting as commissioners. It is requested
 7 that the testimonial evidence be given at some time agreeable to all involved in January 2023.

8 10. The parties have agreed on and the Court hereby appoints Mr. Olivier Buff to serve
 9 as commissioner (“the Swiss Commissioner”). Mr. Buff is a lawyer with the law firm Quinn
 10 Emanuel at Dufourstrasse 29, 8008 Zürich, Switzerland, and admitted to practice as an attorney in
 11 Switzerland and New York. In his capacity as commissioner, Mr. Olivier Buff will complete and
 12 oversee the following tasks: liaise with the Swiss authorities; act as an agent of service for any
 13 communication of the Swiss authorities to this Court, the parties and Mr. Janos Levai; invite Mr.
 14 Janos Levai to the deposition once authorization is granted; verify and confirm the identity of Mr.
 15 Janos Levai before testimonial evidence is taken; supervise the testimony of Mr. Janos Levai by
 16 remote videoconferencing software from the Swiss offices of Quinn Emanuel at Dufourstrasse 29,
 17 8008 Zürich, Switzerland (or another nearby office if additional space is required); instruct the
 18 witness on his rights and obligations as per Article 21 of the Hague Convention; and ensure that the
 19 testimony is conducted in accordance with those rights and obligations.

20 11. The U.S. counsel of the parties, which the Court upon request of the parties hereby
 21 also appoints as commissioners are the following:

22 a. For Google: Nima Hefazi and James Judah, from QUINN EMANUEL URQUHART
 23 & SULLIVAN LLP at 50 California, 22nd Floor, San Francisco, CA 94111, USA
 24 and 865 S. Figueroa Avenue, 10th Floor, Los Angeles, CA 90017, USA.

b. For Sonos: Dan Smith, Michael Boyea, and Sean Sullivan from LEE SULLIVAN SHEA & SMITH LLP at 656 W. Randolph Street, Suite 5W, Chicago, IL 60661.

12. In addition to the U.S. counsel and commissioners listed above and of the Swiss
Commissioner, it is also requested that client representatives for each party be allowed to be present,
and that a videographer and a stenographer be present to take and record a verbatim transcript of all
testimony and proceedings in the English language and that the transcript of the testimony be
authenticated. When necessary, persons belonging to the information technology departments of
the law firms of U.S. counsel may enter the rooms where U.S. counsel are remotely attending the
deposition. U.S. counsel, the party representatives, the videographer, and the stenographer may
attend the deposition remotely. The Swiss Commissioner, Mr. Janos Levai and potentially any of
the appointed other commissioners will attend the deposition by videoconference from the same
location in Zürich. When necessary, persons belonging to the IT department of the Quinn Emanuel
law firm where the deposition is held may enter the room where Mr. Janos Levai is remotely
attending the deposition.

17 13. As mentioned, it is requested that the commissioners take Mr. Janos Levai testimony
18 in the English language (to which Mr. Levai has agreed) under oath or affirmation, and that the
19 Swiss Commissioner be allowed to administer such oath or request for affirmation on Mr. Janos
20 Levai in accordance with United States law, as follows: "Do you swear or affirm that the testimony
21 you are about to provide is the truth, the whole truth, and nothing but the truth?"

23 14. It is also requested that after giving testimony, Mr. Janos Levai be allowed after
24 completion of the transcript to review, submit any errata, and sign the transcript of his testimony,
25 and that the signed, transcribed, and videotaped testimony together with any documents marked as
26 exhibits be transmitted to the parties' U.S. counsel as soon as possible thereafter.

1 15. Accordingly, it is hereby requested that you grant assistance and authorize the Swiss
2 and U.S. commissioners appointed above to question Mr. Janos Levai under oath or affirmation at
3 the remote deposition at a date that works for all involved in January 2023, or at another time
4 determined by you, and that a verbatim transcript and videotape be prepared and be transmitted to
5 the parties' U.S. counsel for submission and use before this Court.
6

7 16. It is also requested that you inform the Swiss Commissioner, this Court, and the
8 parties through their above-mentioned U.S. counsel of your approval of this Court's request and of
9 all relevant dates and times determined by you for the production of the aforementioned requested
10 testimonial evidence of Mr. Janos Levai. This Court and U.S. counsel hereby appoint Mr. Olivier
11 Buff to act as the agent of service in Switzerland for any and all communication from you in this
12 respect. As mentioned above, Mr. Olivier Buff's professional address in Switzerland for purpose of
13 your communications is: Dufourstrasse 29, 8008 Zurich, Switzerland.
14

15 17. This Court expresses its appreciation to the Federal Office of Justice for its courtesy
16 and assistance in this matter and states that this Court shall be ready and willing to assist the courts
17 of Switzerland in a similar manner when required. This Court is also willing to reimburse (through
18 the Parties) the competent judicial authorities of Switzerland for any costs incurred in executing this
19 request for judicial assistance. This Court extends to the competent judicial authorities of
20 Switzerland the assurances of its highest consideration.
21

22 This Letter of Renewed Request is signed and sealed by Order of the Court made on the date
23 set forth below:

24
25 **SO ORDERED.**

26 DATED: December 27, 2022



HON. DONNA M. RYU
United States Magistrate Judge